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Part I: Summary of Case History Approaches to Effective Public Participation

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Increased opposition to pollution and urban sprawl has resulted in the formation of citizen groups seeking to control their personal lives. One response to citizen activities is technology assessment in which citizens can have input at the beginning of a technological development before it is well entrenched. In two case studies of public participation in assessing energy technologies, the first treats citizen group involvement in electric utility policy making. The second discusses citizen participation on Federal advisory committees. Both are examples of new procedures to provide more public participation in government decision-making and also provide strong evidence of the great difficulties citizens have in influencing technology policy making. Some of the problems involved are listed. A summary of examples from these two cases are grouped in approach areas: (1) formalize commitments to public participation by removing vagueness in public participation statutes and regulations; (2) provide accountability to citizens; (3) provide adequate notice of and access to assessment activities; (4) actively solicit diverse citizen input; and (5) provide technical and financial resources for citizen groups. The remainder of this report provides a detailed description of each approach.

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TECHNOLOGY ASSESSMENT AND THE CITIZEN

Part 1

SUMMARY OF CASE HISTORY APPROACHES TO EFFECTIVE PUBLIC PARTICIPATION

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January 1, 1977

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INTRODUCTION AND SUMMARY

Growing citizen concern over new technologies has left an indelible mark on the 1960's and 1970's. Citizen opposition to pollution and urban sprawl has spread to every American city; Ralph Nader and his co-workers have stirred the consumer's interest in corporate and bureaucratic reform; industrial workers have become dissatisfied with occupational health and safety conditions.

Certainly, these citizen activists represent no small sector of the population. The poor, minorities, women, the aged, and the young are more aware of how seemingly remote technical decisions can intimately affect their lives and communities. Organized citizen groups of all stripes, clamoring for more personal control over their lives, find they have difficulty in affecting change without addressing complex technical questions.

Several hopeful social and political responses to citizen activism are emerging; one important response is technology assessment. As its name implies, technology assessment examines the present and future social, economic and environmental impacts of new technology. By taking part in technology assessments, citizens can have input at the beginning of a technological development rather than after it is well entrenched.

To be effective, citizen participation in technology assessment has two basic prerequisites:

--effective procedures for citizen access to scientific and technological decision making;

--technical assistance to citizens to help them deal with the issues at hand.

Citizen groups have, of course, recently gained new opportunities for the first of these, access to technological policy making. Perhaps the best example at the national level is the National Environmental Policy Act (NEPA), passed in 1969. NEPA requires federal agencies to prepare assessments of the environmental impact of proposed actions. This provision has been used by many environmental groups to press for a more in-depth look at environmental costs and benefits of federal projects. Well established technologies like highway construction as well as untried technologies like the breeder reactor have been subjected to increased public scrutiny.

Similar assessments have also been conducted by citizens under the regulatory frameworks of the Food and Drug Administration's food additives testing program, the Consumer Product Safety Commission's product standards regulations, the Interstate Commerce Commission's rail reorganization hearing process, and others. Recent environmental legislation such as the Clean Air Act, the Federal Water Pollution Control Act, the Noise Control Act, the Toxic Substances Control Act all provide citizens with extended legal rights to assess impacts of corporate and governmental technological developments.

Yet, these new means of access are only a beginning. Most government agencies have few public access procedures; bureau business is customarily conducted without public input of any kind. What procedures do exist rarely solicit public input before basic decisions have already been made.

The second prerequisite for effective citizen participation, adequate technical assistance and policy information, has also been in

short supply. In litigation and in administrative procedures, citizens have too often lacked the technical data and analysis necessary to present thoroughly developed positions.

Examples of insufficient technical information for citizen organizations abound in almost any area one might examine, from earth science information on environmental problems to economic information for tax and utility rates. In each area, voluntary advocacy groups are using new opportunities given them by federal legislation. Those opportunities will atrophy without the information to engage in a rational discussion of alternatives.

In summary, if technology assessment is to identify social options, it must improve public access to actual decision making and citizen access to technical assistance, as well as use information gained from direct citizen involvement throughout the assessment process.

Summary of this report

This report provides two case studies of public participation in assessing energy technologies. The first case treats citizen group involvement in electric utility policy making. The second discusses citizen participation on federal energy advisory committees.

Both cases provide examples of new procedures to provide more public participation in government decision-making: People's Counsels at the state level and advisory committees at the federal level. Both cases also provide strong evidence of the extreme difficulty citizens have in influencing technology policy making. Some of these problems are as follows:

(1) Through an analysis of interviews of citizen and officials involved

in electric utility rate making we found that lay citizens are discouraged from actively participating in utility policy making proceedings because of the intrinsic legal and technical complexity of the rate proceedings.

(2) Citizen leaders expressed dissatisfaction that the People's Counsels have not been able to respond fully to citizen concerns over non-traditional issues such as rate restructuring and conservation policy. Political and budgetary problems as well as statutory vagueness creating the offices have diminished the accountability of these officials to their consumer clients. As a result, voluntary organizations, we find, often prefer direct participation to representation by the People's Counsel.

(3) The study of federal energy advisory committees found similar public participation problems. The Federal Advisory Committee Act's goal of increasing public participation has yet to be reached. Industry representatives constitute nearly half (47.8%) of advisory committees surveyed. Business (9.4%) and academic (7.0%) representatives are the second largest non-governmental groups represented. Consumers, environmental and labor representatives provide the smallest number of members with 4.3%, 3.0%, and 1.9% respectively.

(4) Agency officials express a variety of reasons for not recruiting more consumer and environemntal members of advisory committees: they consider public interest members to be technically unqualified, to be uninterested, or inappropriate in that they are not "decision makers." Citizen group members believe that the agencies do not wish to open their deliberations to "outsiders." Citizen group members have not pressed strongly for more representation because they apparently feel that advisory committee activity is too peripheral to their own goals to expend the effort required to become members.

(5) Openness of advisory committee meetings suffers from vague and disputed applicability of regulations, non-uniform procedures on the part of agencies and reluctance of many agency officials to permit citizen members to attend meetings.

While the two cases point out the problems with public participation, they also indicate steps being taken that begin to remedy those problems. For example, the People's Counsels relieve citizens of presenting complicated analyses of utility rate increase requests and provide an effective mechanism for helping consumers keep lower rates. People's Counsels also provide information and some technical assistance that can facilitate public involvement in the proceedings.

Federal advisory committees provide perhaps the most common form of formal access for citizen group members. The clear direction of the Federal Energy Administration Act for providing more consumer representatives has been successful in this respect; the FEA's committees, compared to those of other agencies, include more than double the number of consumer and environmental representatives--10.8% and 7% respectively.

What follows is a summary of examples from the two cases of remedial steps that encourage public participation in government decision-making. We have grouped these examples under five categories or approaches to effective participation:

(1) Formalize commitments to public participation by removing vagueness in public participation statutes and regulations;

(2) Provide accountability to citizens;

(3) Provide adequate notice of and access to assessment activities;

(4) Actively solicit diverse citizen input;

(5) Provide technical and financial resources for citizen groups.

These approaches from the two cases could be applied to public participation in other kinds of technology assessments.

The remainder of Part 1 of the report describes each of these approaches in more detail. Part 2 then discusses in-depth the experience of citizens with People's Counsels. Part 3 discusses in depth the Federal energy advisory committee experience.

Formalize commitments to public participation by removing vagueness in public participation statutes and regulations.

Example: Federal Energy Administration Act provisions for consumer representation.

Section 17 of the Federal Energy Administration Act of 1974 mandates that when creating an advisory group "the Administrator shall endeavor to insure that each group (i.e., advisory committee) is reasonably representative of the various points of view and functions of the industry and users affected, including those of residential, commercial and industrial consumers...." Thus, in addition to the vague requirement of "fair balance in terms of points of view represented" stipulated by FACA for advisory committee membership, FEA has the additional responsibility of including spokesmen from residential, commercial, industrial and other consumer categories on each of its advisory groups.

The more precise provision for public representation has significantly increased the number of public interest group members on the agency's advisory committees. For the 16 advisory committees surveyed in Table 1, consumer and environmental representatives accounted for 4.3 and 3.0% of the membership respectively, but for the FEA committees they account for 10.8 and 7% of the membership respectively; this represents over a doubling of the number of public interest representatives. While there are undoubtedly other factors which have increased consumer representation, such as the intense consumer interest in federal energy issues, a significant amount of the increase can reasonably be attributed to the specific mandate of the FEA Act.

Example: Development of more uniform guidelines for public participation on advisory committees.

ERDA, NRC, and FPC have all developed various forms of agency guidelines detailing how their advisory committees operate. A similar set is now under consideration in the FEA as part of its Consumer Representation Plan. The guidelines elaborate on the requirements of the Federal Advisory Committee Act, as interpreted by the various agencies and the applicable OMB guidelines and specify in detail how those provisions will be applied by the agency.

Similar guidelines could be issued by all agencies. A procedure similar to that used by FEA could be considered whereby proposed guidelines are first subject to public hearings and comments prior to being finalized. The guidelines would address all the major points raised in this study regarding committee composition/balance, openness, notice procedures, compensation for members and consultants, publicity for committee actions, and methods for incorporating the committees into agency planning procedures.

Though possessing what has largely been viewed as a "watchdog" role in the management of the individual agency's advisory committees, the OMB's Committee Management Secretariat is able to influence the nature and thoroughness of agency advisory committee guidelines. Through direct intervention in the agencies themselves as well as through the issuance of its own guidelines and regulations, the OMB could seek more uniform agency compliance with all the provisions of the FACA.

Example: Agency efforts to increase public membership on advisory committees.

By the terms of its enabling legislation PL 92-275, FEA is obligated to have a minimum of one residential consumer representative on each of its advisory committees as well as at least one representative of industrial and commercial interests on each advisory group. FEA has recently taken this mandate a step further. The new FEA Consumer Representation Plan includes a provision that there shall be a minimum of three bona-fide representatives of residential consumer interests on each of its advisory groups. The Committee Management Office of that agency has proceeded to solicit the names of potential members for all the committees giving special emphasis to selecting members with credentials in consumer affairs issues.

ERDA, in a first step towards developing a policy of balanced membership, has proposed that committee membership should also seek to be balanced in terms of race and sex in accordance with a cross-section of the national population. This guideline apparently was promulgated to avoid the trend of staffing committees with members who are predominantly upper-income, male, and white. In at least one instance, the FEA has also adopted such an approach; its recently-restructured Consumer Affairs/Special Impacts Advisory Committee was designed to insure that at least 50% of its members were women--a unique accomplishment.

While having no consumer or environmental spokesperson on any of its advisory committees, the Nuclear Regulatory Commission has taken a small step towards greater public input via the addition of public

interest representatives to the list of consultants working with its committees. While such consultants are not a substitute for actual participation on a given committee, they can be viewed as an additional mechanism for securing greater balance in committee deliberations.

While perfect or absolute balance on each committee of every conceivable interest group would be difficult to achieve, the Committee Management Office of each federal agency could improve the current cross-section of interests represented on the committees. As a step towards insuring that FACA's mandate of committees being balanced "in terms of points of view represented," each agency could issue advisory committee guidelines that provide a possible minimum number of consumer/environmental representatives. A possible minimum could be three members or 30% of total membership--whichever is larger.

Provide accountability to citizens.

Example: Residential Utility Consumer Action Groups (RUCAG)

RUCAG is a non-profit citizen corporation which would represent residential utility consumers before state regulatory legislative bodies and other public authorities. RUCAG would also be provided with the resources and responsibility to "conduct and support research investigation and public information activities in the utility area."[1]

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[1]Robert B. Leflas and Martin H. Rogol, "Consumer Participation in the Regulation of Public Utilities: A Model Act," Harvard Journal on Legislation, 13 February 1976, pp. 235-297.

RUCAG was first introduced by Ralph Nader in his syndicated column, "In the Public Interest," in the fall of 1975. Later that year Connecticut Congressman Toby Moffett discussed RUCAG on the floor of the House of Representatives. The following summer RUCAG gained more momentum and preliminary legislation was drafted. Since then a model piece of legislation has appeared in the Harvard Journal on Legislation, and various citizen groups are actively trying to persuade legislators to pass such a bill.[1]

Fourteen states and Washington, D.C. are in differing stages of legislative action on the bill.[2] The states are: Arizona, California, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New York, Ohio, Oregon, Virginia and Washington, D.C.

RUCAG is similar to People's Counsel offices except for a basic difference: RUCAG is funded and directly accountable to its members. Consumer may contribute to RUCAG in three ways and each state can choose the system it prefers.

According to the first method, each month's utility bill would include a section where the consumer could check off a pre-designated amount of money for RUCAG. The consumer would then pay his utility bill and include the RUCAG donation.

In the second method the contributor pledges his contribution and is charged for the donation on next month's bill. The third method allows more than one member of the household to be a RUCAG member. These contributors would include their payments with the monthly bill.

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[1] Ibid., p. 252.

[2] Ibid., p. 236.

In each case, the utility company would provide a list of the RUCAG members and the money contributed. RUCAG would cover all expenses incurred by the utility company.

RUCAG's Board of Directors members are elected to the office by the residential consumers in their districts.[1] In order to run for the Board, a perspective candidate is required to file a complete statement of all his financial resources and indicate "the nature of the candidate's employment, directorships and trusteeships held," and all transactions with utility companies.[2]

The candidate's biographical sketch and written statement of opinion on issues would be sent to RUCAG members with one of the electric bills. To be placed on a ballot, the hopeful candidate must submit a petition which is signed by a certain percentage of voters in his/her District.

Board members work with the appointed Executive Director of RUCAG for three years. All Board meetings and membership gatherings would be open and minutes would be published and available in public places.

RUCAG was designed to be independently funded and completely accessible to consumers. In the Harvard Journal on Legislation, Rogol and Lefler cite three reasons for RUCAG:

1. The absence of an institution possessing the necessary expertise to provide residential utility consumers with a voice in setting policies;
2. The inadequacy of funding for consumer advocates and People's Counsel offices;
3. The absence of mechanisms to hold consumer advocates accountable to their constituency.

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[1] Ibid., 252.

[2] Ibid., 255.

Example: The Rhode Island Consumer Council

The Rhode Island Consumer Council was created to represent consumers in matters where the state sets rates or regulates the quality of service. The Council also develops and disseminates consumer information. The Governor, Lieutenant Governor and the Speaker of the House appoint seven citizens to the Council. Two of the seven are chosen from a list of candidates proposed by the state AFL-CIO. The Council selects an Executive Director and oversees his or her activities.

The number of citizens selected from prepared lists could be increased. Lists would be solicited from diverse voluntary citizen groups in the State. In Rhode Island, for example, citizen organizations such as the senior citizens of Rhode Island, the Coalition for Consumer Justice and the Consumer Protection Center could prepare lists of qualified, interested candidates.

Example: Follow up of consumer advisory committee recommendations

Similarly, relay all committee recommendations/statements to the appropriate members and committees of Congress. FEA's Consumer Representation Plan urges that

> formal reports approved by a committee should be publicized in the form of an official agency press release. In addition, the appropriate program office should if possible provide a response to the formal report at the next committee meeting.

While this procedural guideline is not as broad as the proposed option, FEA has set another precedent that is somewhat closer. In 1975, the

members of the FEA's Consumer Affairs/Special Impacts Advisory Committee selected one of their members to serve as the "Publicity Officer" of the Committee. That individual's function was to report all committee recommendations and other formal actions to the press, news media, and concerned committees/members of Congress. The result was broadened to reporting of committee activities in the general press and greater awareness by the Congress of the committee's actions.

The FEA presently issues advance press notices of upcoming meetings that summarize the planned agenda. Similar notices are also issued by the Federal Power Commission and ERDA. These notices could include information on past actions on the committees. Occasionally, the FEA's "Energy Reporter" newsletter and the FPC's "FPC News" newsletter carry small notices on reports or recommendations issued by their committees.

To provide greater public exposure to committee actions and thereby enhance public awareness and interest in the committees, the gency official responsible for a given committee or an agency's committee management office could cooperate with the agency's public affairs office to publicize committee recommendations and actions. The press releases and newsletters issued by most such agencies are the most readily available and direct means of securing such publicity. An alternative is to encourage or authorize an agency committee to select a publicity officer from among its members to coordinate with the agency's public affairs office the development and issuance of such news items. That person could also work with the agency's Congressional

liaison office to provide interested members of Congress with news of committee actions and areas of investigation.

Provide adequate notice of and access to assessment activities.

Example: FEA advisory committee openness provisions

The enabling legislation of the Federal Energy Administration (PL 92-275) provides under section 17 b and c that

> Each meeting of such [FEA advisory] board, task force, commission, committee, or similar group, shall be open to the public, and interested persons shall be permitted to attend, appear before, and file statements with such group except that the Administrator may determine that such meeting shall be closed in the interest of national security. Such determination shall be in writing, shall contain a detailed explanation of reasons in justification of the determination, and shall be made available to the public. All records, reports, transcripts, memoranda, and other documents which were prepared for or by such group shall be available for public inspection and copying at a single location in the offices of the Administrator.

Since the enactment of this legislation in June 1974, the FEA has conducted all its advisory committee meetings in public (although a number of private meetings do occur between committee members and agency officials, generally of an informal nature). Most of the meetings have been held in large meeting rooms located in the main FEA office facility in Washington, D.C.

Likewise, the meetings of the Interior Department's National Petroleum Council and the National Power Survey Committees of the Federal Power Commission have been conducted in the open. NPC Informa-

tion Director Joan Walsh has reported that "members of the public, members of the press, and agency officials have attended all such (NPC) meetings in recent time.... The meetings are generally held in the auditorium at the Department of Interior." In a statement released April 1, 1976, the Federal Power Commission announced that

> in order for the Commission to carry out its mandate to provide Federal regulation in the public interest of the interstate electric and natural gas utility service, the Commission recognizes the principle that the public interest is best served when regulatory affairs are open to the fullest extent practicable. To ensure the achievement of this goal, it is the purpose of this Order [Administrative Order #160] to bring to the attention of all Bureaus, Offices, and Regional Offices the policy of the Commission to open Commission meetings to the public and, whenever practicable, to notify the public in advance of all Commission meetings.... The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission hearings.

The NRC, which has a large percentage of its meetings partially or fully closed to the public, does have provisions whereby it is occasionally possible for a member of the public to attend a meeting of the Advisory Committee on Reactor Safeguards where proprietary information would be discussed. In order to attend such a meeting, a citizen would have to secure written permission from the industry whose proprietary interests were at stake and then send a copy of the letter granting permission to the office of the executive secretary of the ACRS no later than three days before the date of the meeting.

In light of the ability of the FEA, FPC, and DOI's National Petroleum Council to conduct their meetings in the public, committee liaison officers and/or committee management offices could keep committee meetings open to the public. Only in extreme circumstances would

meetings be closed and in such situations, the agency would bear the burden of proving the necessity of closing the meeting rather than the public demonstrating the lack of such necessity. When a decision to close a meeting is made, some provisions could exist for appealing the decision to close themeeting or at least procedures for gaining an exception to the closure decision.

The use of Exemption #5 of the Freedom of Information Act (which covers "interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" and which has provided the basis for one-sixth of all closed meetings) could be eliminated or at least clarified. Legislation to abolish Exemption #5 provision for closing advisory committee meetings has been introduced by Senator Lee Metcalf (D-Mont.) but no significant action has been taken on it to date.

Example: Advance notice of FPC and FEA advisory committee meetings

Except in emergency circumstances, the Federal Advisory Committee Act (FACA) presently mandates at least two weeks advance notice in the Federal Register of all advisory committee meetings. A number of agencies, however, have found it possible to provide substantially longer notice. The Federal Power Commission, for example, issues press notices (and special alerts to its committee members) periodically that announce all known upcoming meeting dates; these dates are often announced as much as two months in advance. Similar advance notice is also published in the Federal Register.

While generally not as time-advanced as the FPC's, FEA's notice of upcoming committee meetings can generally be found in the Federal Register three to four weeks prior to the meeting time. The Committee Management Office of FEA further publishes irregular listings of upcoming committee meetings--many of these meeting notices are for meetings a month or more in the future; such announcements are generally sent to interested citizens and committee members.

This advance notice procedure could be coupled with an inclusion of committee meeting notices in the local newspapers of the cities where meetings are scheduled to be held; these notices would be prominent enough to assure reasonable probability of readership. The Office of Management and Budget has previously advanced this recommendation to various agency committee management offices though it has not issued the proposal in a mandatory guideline form.

Inasmuch as the current 15-day notice is frequently insufficient for working people, particularly those outside the meeting city, to make arrangements to attend committee meetings, a longer advance notice time is preferable--generally a 30-day notice of upcoming meetings should be issued. Such notice should appear not only in the Federal Register but also in other news releases and publications issued by the sponsoring agency. Responsibility for getting announcements of upcoming meetings to the agency's public affairs office would generally lie with either the agency's Committee Management Office or the agency official responsible for a given committee.

Example: Advance notice of advisory committee meeting agendas.

Possibly the most developed notice provisions presently provided to the public have been developed by the Federal Energy Administration. FEA's Federal Register notices generally include a precise listing of the issues which the committee anticipates it will be considering. These agenda items are generally specified in advance by the individual committee chairmen in consultation with the appropriate FEA staff persons. Generally, the members of each committee outline for their chairmen the issues they would like included on the agenda for their next meeting. The notices also include an acknowledgment of the right of the public to attend and make written or oral statements to the committee members. The procedure for doing this is described in the Federal Register notice; generally, it consists of notifying the committee chairman or the Committee Management Office several days in advance of the committee meeting to allow proper scheduling.

While considerably less precise than FEA in defining the items to be discussed at a given meeting, the Nuclear Regulatory Commission's Federal Register notices generally provide reasonably explicit information on how interested persons can obtain copies of committee meeting minutes. NRC notices also include a provision for allowing the use of still and motion-picture cameras at open portions of committee meetings provided they do not interfere with committee functions. The NRC also provides satisfactory detail in its Federal Register notices regarding the procedures to be employed by interested citizens who wish to present oral or written statements to committee members--specifically, the

name and phone number of the appropriate NRC official are given as well as the deadline for securing the necessary permission--usually a day or two before the meeting time.

The form of the notice filed with the Federal Register regarding upcoming meetings usually lies within the discretion of the agency's Committee Management Office. That Office, therefore, could provide at least the following information: (a) the time and place of the meeting, (b) the phone number, address, and name of the individual to be contacted in the event a citizen has any questions about an upcoming meeting, (c) the procedure by which a citizen may submit a written statement to a committee or make an oral presentation to the committee members, (d) the agenda for the committee's meeting described in as much detail as is possible (including one-line descriptions of agenda items instead of just topic headings), and (e) the procedures to be employed by citizens to either gain access to closed portions of a committee meeting or to appeal the closing of any portion of the meeting.

Example: People's Counsel citizen newsletters

The Washington, D.C. People's Counsel publishes "Utility Line"; Maryland's publishes "Utility Consumers Newsletter." Both are distributed widely to citizen groups interested in utility policy. Both describe upcoming hearing information and explain technical aspects of utility proceedings.

Actively solicit diverse citizen input.

Example: The Interstate Commerce Commission (ICC) Public Counsel

The ICC Public Counsel was established as part of the Rail Services Planning Office (RSPO). Under the Regional Rail Reorganization Act the RSPO Public Counsels inform and involve citizens in policy discussions concerning the reorganization of the Northeast and Midwestern railroads.[1] This office was to "employ and utilize the services which for whatever reasons, such as their size or location might not otherwise be adequately represented...."[2]

The office would conduct open hearings in communities where the abandonment of a rail line was the issue. These public hearings concentrated on obtaining citizen viewpoints on the preliminary system plan prepared by the United States Railway Association (USRA). In theory, the USRA would incorporate citizen comments, ideas, suggestions, etc. into the final system-plan to be submitted to Congress. Citizens would be informed of the hearings and assisted with the preparation of their testimonies with the help of "outreach" attorneys.

The ICC Public Counsel office consisted of a permanent staff in Washington and fifteen to twenty attorneys who would be recruited as needed on a contract basis. These lawyers had experience in public interest law firms, legal services programs or in congressional office

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[1]Regional Rail Reorganization Act of 1973 (PL 93-236), amended by PL 93-488, 26 October 1974.

[2]U.S. Congress, House of Representatives, Committee on Conference, Regional Rail Reorganization Act of 1973, p. 11.

work. The "outreach" attorneys contacted, informed and organized citizens to participate in Rail Services Planning Office hearings held in their assigned districts.

Each attorney had a particular area and he/she was responsible for gathering and disseminating information about these public proceedings. Each attorney had his/her own method of organizing the district. Ed Kuhlman describes how he went about discovering who were the interested members of the community and their views:

> We simple went and visited every shipped on every line. It took about three days to do a series of lines served by the Erie-Lackawanna which is one of the bankrupt railroads. We also contacted planning people who are very broad-based because they are interested in every economic aspect of the area. We would ask them to organize groups. (Ed Kuhlman, 8/29/75)

Cliff Curtis, another "outreach" attorney, used the ICC local office for coordinating efforts:

> I went up to Albany to the ICC office and got on their WATS line and just started calling local people, and people throughout the state, citizen groups, environmental groups. I contacted the League of Women Voters, lobbying groups, associated industries, Chambers of Commerce, mayors and regional planners. I covered the waterfront. Each phone call I made, I'd say, "Do you know of other people who are intereste in railroad transportation issues?" (Cliff Curtis, 8/29/75)

In many ways the Public Counsel "outreach" program has had to overcome public skepticism and convince people that their input would be meaningful. Again and again, the attorneys began to realize how few people believed "they could make a difference," or knew how to go about influencing the governmental process.

Ed Kuhlman was a bit dismayed and surprised at the public's view of the ICC and the Federal Government in general:

> The Interstate Commerce Commission is viewed as the authority establishment kind of group that certainly has no one's interests at heart except maybe the railroads. The ICC is viewed as an authority figure, certainly against anything these local people stood for. We would have to explain that we weren't spies for the ICC and that we were there to assist them.
>
> I learned a great deal about the way people away from Washington view government. It was a fascinating thing to see how paranoid people are about government in Washington today--and terribly cynical.
>
> Essentially what we tried to show them was that if they could follow various processes, if they put forth some effort they could make a change. It wasn't all negative. (Ed Kuhlman, 8/26/75)

When the "outreach" attorneys were asked whether the Public Counsel was instrumental in improving citizen faith in the government, most responded as did John Schell:

> There's no doubt about it. The ICC has never had it so good. Very few Federal agencies ever have. People responded to government responding to them. It was not massive. It was impressive. (John Schell, 9/10/75)

Senator Vance Hartke (D-Ind.) expressed a similar opinion during a Senate Commerce Committee hearing:

> I think you should know that the Public Counsel has perhaps done more to improve the image of the Commission in the eyes of the public than any other recent Commission activity.[1]

It appears that after the initial introductions, the "outreach" attorneys were well received and trusted by local communities. Lettie Carson, a long-time activist in New York State and President of the

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[1]Hearing on Federal Branchline Policy, U.S. Senate, 17 July 1975, p. 183.

Northeast Transportation Coalition, is an enthusiastic supporter of the "outreach" attorneys and the Public Counsel:

> They have been a tremendous help to the local communities, the citizens and the citizen groups, freight users and business heads...they have interpreted the law which is not easy for me or any other citizen to interpret...they have been very kind and helped people make effective presentations at hearings. (Lettie Carson, 8/28/75)

There is very little disagreement that the ICC Public Counsel was an effective solicitation mechanism which resulted in improved citizen-agency relations and increased direct citizen participation.

The Public Counsel process has received some criticism. Once the public testimonies were gathered, analyzed and summarized some of those interviewed felt that there was no assurance that the United States Railway Association would adhere to the public's sentiments on developing the final system plan.

> They didn't consider anything, they just went right on. USRA has based its plan on old time railroad thinking without any concern for the social or environmental impacts on the communities. (Lettie Carson, 8/28/75)

An economist who works with citizen groups felt that the Public Counsel solicits opinions from those people who they know will support the agencies' viewpoints. These "consumers" are usually landholders, local bankers and small businessmen. The general public has been misled according to the economist because the "outreach" attorneys were told to inform consumers on selected issues. As evidence, he points out that the attorneys dealt with basically the restoration of the branchlines, rather than with other issues which he considers more meaningful.

The economist, who declined to be identified, has some serious reservations on the education and solicitation process used by the Public Counsel:

> It's the process. It just can't be a passive one by its very nature. The way that they solicit opinions, the kind of technical expertise that they provide, the kind of materials they provide, the basic background briefings that their lawyers were going to conduct the hearings on, all these things influence what actually happens in the process.
>
> Any such Public Counsel structure should be independent of an agency or state political apparatus and lawyers are not the right people to be organizing in the field.

He thinks that lawyers tend to listen only to the most vocal elements of communities because they are unfamiliar with the substantial policy issues. However, he did comment that the attorneys working with the Public Counsel are "an awfully good bunch of people." He is not sure where the ICC Public Counsel model would apply, and whether it would be a more independent arrangement in another setting.

Example: Early advisory committee review of agency energy policy.

The FEA Consumer Representation Plan calls for advance notice to interested citizens and advisory committee members of proposed policy recommendations:

> In some instances, it may be appropriate for the agency to provide notice of major policy or program development in advance of the proposal of a regulation or implementation of the policy or program.... Notifying the public through informal contacts that FEA is considering the development of a new policy or program can be accomplished in several ways. The program office initiating a particular policy or program can maintain a list of interested persons and consumer groups, notify them

> that a new policy or program is being considered and solicit their reactions and suggestions.... Program officials can also inform the Consumer Affairs/Special Impacts Advisory Committee that a new policy is being considered by submitting to them a fact sheet or by scheduling a brief presentation to outline the issue and solicit input.

The FEA has also assured several of its advisory committees that it would provide advance notice of topics to be discussed at the White House's Energy Resources Council in order to afford the committees an opportunity to state their views on the given agenda items.

ERDA has begun an informal consideration of proposals to either consult with or contract studies out to citizen groups on certain policy issues before the agency. Under the second alternative, public interest consultants would review a proposed agency policy prior to finalization and even, in some instances, prior to the completion of a draft environmental impact statement.

With the cooperation of the agency Committee Management Officers and the agency committee liaison officials, it is generally feasible to consult with advisory committee members at the earliest stages of policy making--i.e., at the time when a proposal is first being discussed within the agency.

Coupled with procedures for consulting with committee members in advance of policy-making is the concept of providing feedback to advisory committee members on all their recommendations including agency reaction to committee suggestions and any action to be taken by the agency in response to those actions. Also to be found in FEA's Consumer Representation Plan is the provision that

> the program office which is responsible for a particular major policy or program development shall provide to the extent practicable policy or technical information concerning developments at the earliest practicable time and at places easily accessible to interested or affected persons and organizations and inform consumer about the availability of such material to enable them to make informed and constructive contributions to the agency's decision-making process.... The program office will provide a response to interested or affected persons and organizations concerning their recommendations and suggestions within a reasonable period of time after receipt of such recommendations.... Aside from those instances when a particular program or policy is presented to the Consumer Affairs/ Special Impacts Committee and other FEA advisory committees, each program office should provide periodic progress reports and/or schedule briefing meetings with either the full committee or one of its subcommittees.

The administrators of the given agencies could institute agency proceedings modeled on those being planned for the Federal Energy Agency and being discussed within ERDA for involving the advisory committees and other interested citizens in the early stages of policy-making as well as providing regular feedback on recommendations received.

Example: Field hearings and workshops held by Public Service Commissions

Public hearings can be held in large informal setting such as school auditoriums or churches. It is an opportunity for citizens to publicly express their views to Public Service Commissioners. Citizens have alleged, however, that these public hearings have been used merely to pacify angry consumers and that the Commissioners have not taken citizen complaints seriously. Nevertheless, public meetings of this sort can be productive to both officials and to citizens.

Field hearings have been held by People's Counsels in New York and informal workshops have been held in the District of Columbia. These meetings can benefit both the People's Counsel who learns first-hand what consumers are concerned with and the public which has the opportunity to influence the direction of the People's Counsel office.

The New Jersey Rate Counsel conducts informal pre-hearing meetings in which citizen intervenors and company representatives trade information informally.

Example: Solicitation of citizen input on public participation programs

The District of Columbia and the State of New York require that People's Counsels in those states be approved by the City Council (D.C.) or by the Senate (N.Y.). The confirmation hearings provide an opportunity for public officials and members of the public to meet the prospective People's Counsel and to testify on his or her qualifications and suitability for the post.

Such hearings should be well publicized and held in school auditoriums or churches in order to make the hearings more accessible to citizens.

In soliciting new members for its Natural Gas Survey Advisory Committees, the Federal Power Commission published a notice in the Federal Register that announced the agency's desire to "include a cross-section of consumers, environmental, and industrial interests" and which invited the submission of names of potential appointees. Persons whose

names were submitted were then contacted by the agency to determine the individual's interests and availability to serve on the committee.

The FPC followed up its Federal Register notice with a general press release noting the agency's desire to include a broad representation of public interest organizations and an interest in seeking more nominees. The press release read in part:

> The National Gas Survey Advisory Committee Program has been designed to provide a balanced approach on each of the Advisory Committees and Task Forces. We have contacted a number of public interest groups to provide adequate consideration for consumer interests.... Committee members have been appointed to provide consumer and environmental points of view. There are, however, some committees and task forces where we feel additional consumer coverage may be in order. We would appreciate any suggestions you may have as to individuals who might be able to serve in the capacity of a public interest spokesman on the subjects covered by these task forces. Any suggestions you may have for additional participation in any of the other Task Forces or Technical Advisory Committees will also be given consideration.

This notice was subsequently followed by phone calls to a number of public interest groups from the FPC Committee Management Office reiterating the agency's desire for additional public representatives.

The Federal Energy Agency's Consumer Representation Plan calls for wider solicitation of possible nominees for committee vacancies:

> Those citizens and organizations who have previously expressed interest in any of the existing advisory committees should be notified when committee vacancies occur. They should be urged to submit names of possible appointees along with background information on the nominee. In its regular news releases and other publications, the agency may announce the opening of positions on new or existing committees and request the names of qualified persons. These notices should be sent to the major special interest publications that deal with the issues of particular interest to the committee.

The Committee Management Offices of all federal agencies could include announcements in the Federal Register of an agency's plans to charter a new committee or to fill vacancies on an existing one. These announcements would afford a reasonable time (perhaps 30 days) for interested citizens to respond with the names and qualifications of possible nominees. The same procedure could be extended to the agency's newsletters and/or press releases. Such solicitations could be supplemented with direct contacts with public interest groups and individual consumers who have previously expressed interest in a given committee. Likewise, the agency Committee Management Officer or the agency official responsible for a given committee could alert individuals who had earlier contacted the agency regarding the issues of concern to the given committee.

Example: Citizen's Toll-Free Telephone Line

The Rhode Island Consumer Council has utilized a wide area telephone service (WATS) line when federal officials visit the state. Virginia Knauer with HEW's Office of Consumer Affairs, for example, visited the Consumer Council office and answered questions for citizens who called in on the charge-free line. If citizens were provided with less costly and time-consuming ways of communicating their suggestions and ideas to public officials they would find it easier to participate in technology assessments.

A technology assessment team could install a toll-free line in their offices to encourage citizens to call and convey their concerns, or ask for information.

Example: Washington, D.C. survey of citizen concerns

The Washington, D.C. People's Counsel mailed several thousand questionnaires which were filled out and returned to the Counsel. The responses helped inform the People's Counsel on how customers viewed issues and which cases were most important.

Example: New Jersey and Vermont legislation which recognizes diverse public interests

New Jersey and Vermont retain outside attorneys to represent interests of diverse public groups. New Jersey legislation, for example, provides that:

> If the Public Advocate determines that there are inconsistent public interests involved in a particular matter, he may choose to represent one such interest based on the considerations in this section, to represent no interest in that matter, or to represent one such interest through the Division of Public Interest Advocacy and another or others through other divisions of the department or through outside counsel engaged on a case basis.

In Vermont, the Public Service Board hires an "attorney" for the public" to represent citizens before the Public Service Commission. The Board may employ the same or different attorneys for different cases. These attorneys are provided funds to retain expert consultants. Public interest groups in the state have reacted favorably to this practice.

Provide technical and financial resources for citizen groups

Example: Offices of People's Counsels

Virtually all citizens interviewed relied heavily on the People's Counsel to conduct a legal-technical intervention for them. This is a major benefit of a People's Counsel as seen by citizen groups. Ed Lloyd of New Jersey Public Interest Group states that the People's Counsels have more resources than do citizens.

> We sit down and plan strategy for the next rate case. We don't have the resources to get involved in a rate case again so we would like to have our input through the rate council. I think that perhaps our very good relations with the Division of Public Interest Advocacy and the fact that we are beginning to develop a relation with the public advocate himself will help us to have some input on what they do with the next case. (Ed Lloyd, 8/6/75)

Claire Schiff of New Jersey states:

> We have a symbiotic relationship with the People's Counsel. I don't think that you can have the expertise because the citizens don't have adequate funding. You know, the Consumer's League is a shoestring operation. Let's face it. So is PIRG, and they couldn't possibly have people of that professional level of expertise who are going to remain in it for the remainder of their careers.
>
> For the most part, the People's Counsel can provide the technical arguments through their lawyer or by bringing in experts. (Claire Schiff, 7/18/75)

Citizen groups are interested in developing working relationships with decision-makers and other "inside" the utilities or regulatory agencies whom the citizens could tap to help them be more effective in achieving their goals.

For many groups, the People's Counsel himself serves this insider function; for others, disgruntled utility employees are important. Whatever the source, most groups consider the "insider" to be crucial:

> What's the best way to get information? Certainly talk to the employees. How else could you get it, really? (Mike Valenti, Connecticut, 12/30/75)

> We call the utility company, we talk with the person who's specifically in charge of billing. They know who we are, we have good rapport with practically everybody. We explain the situation and ask for information from them so we get both sides of the story first, so we don't go off on a limb without knowing what we're doing.

> After nine years, it's understandable that we have friends in various agencies who will be very confidential and tell us any things that the public doesn't really know. They give us information on what can be done, what their frustrations are, the reasons for those frustrations. We get tips from various people in those agencies whose names I can't mention because obviously their jobs would be in jeopardy. That has been invaluable because we know we're not to waste time. (Community leader, Rhode Island, 11/19/75)

What insiders have to offer is an explanation of complex technical information which the layman cannot decipher, and, most important, valuable advice on what the best strategy might be in any given situation:

> There are very few people who don't have a college education that can take one of the applications and understand it. To me it's like pound cake now because their engineer showed me how to do it, not because I know how to do it, but because I gained the confidence of their employee. (Mike Valenti, Connecticut, 11/21/75)

> You always need an inside person. At least he can tell us when the meeting is going to be held and what room it is going to be in. And what the issues are and what the personalities are like and where they are coming from and who is on the fence. As well as

> some of the other facts and papers and information which is coming down the pike and skeletons and gossip. (Julius Newman, Connecticut, 11/18/75)

> One assistant advised me on testimony I should present concerning advertising regulations for utility companies. I followed his suggestions and he thought that the testimony that was presented was profitable and what he had in mind. (Carolyn Barker, Indiana, 7/23/75)

Without the strategic insider, citizens have serious complaints about gaining access to official information.

> We were naive. We wanted to do something...we wanted to handle all kinds of consumer problems to try to be a rallying point. The electric issue was really our baptismal fire. We wanted that to teach us the lessons. We felt we could learn the sources of information we could tap. We found out that the sources of information are very reluctant to be tapped. Yes, the PC did give me literature. He was very nice, but we never heard from him again. They wanted to handle it themselves. (Dick Scapeli, Rhode Island, 11/19/75)

> Q. Are they usually pretty good about giving you information?
>
> A. If you get the right person. If you get somebody who doesn't have the willingness to check through the files or who would rather give you a wrong answer than get up and find out, or who just doesn't know. (Ruth Altman, Rhode Island, 11/19/75)

> We went to the Public Utility Commission and asked for literature on this. One of them gave us the runaround. They wanted a dollar a page for copies. We finally found a sympathetic ear there. (Peter Turcott, Rhode Island, 11/19/75)

> It was the good grace of the Commission that would make accounting records and things which are not available to us as intervenors available to the public counsel--as I say through the good graces of the Commission. (Alberta Slavin, 9/17/75)

> He was supposed to present his testimony on that date and we were also supposed to argue our oral argument to get in. He would never send us copies of his

> witness testimony. He acted as though it were something secret. We asked him about 3 or 4 days ahead of time. "As soon as you've got it drafted, let's see what you've got," but he declined to do so. In fact, I don't think we got copies of it until we went up there that Friday morning. (John Schell, D.C., 4/4/75)

The legal-technical nature of utility proceedings combined with limited access to the information and expertise necessary to participate strongly inhibits citizen involvement. People's Counsels are a partial remedy in that these state officials have technical competence and access to agency and utility information.

Example: Reimbursement of intervenors

During the past several years, there has been a growing sentiment in Congress and a number of federal agencies to provide financial support to individual citizens as well as to organized consumer-environmental groups that participate in agency rule-making as either intervenors or consultants. Reimbursement programs are either in effect or under consideration in a number of agencies such as the Federal Trade Commission, the Consumer Product Safety Commission, the Environmental Protection Agency, and the Nuclear Regulatory Commission.* Reinforcing this trend is a recent ruling issued February 1976 by the Comptroller General's Office authorizing agencies to provide such financial support to citizen groups.

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*For a complete listing of intervenor funding programs, see Council for Public Interest Law, Financing Public Interest Law in America, Washington, D.C., 1976, Appendix E.

ERDA has had under consideration for the past year to provide direct grants to environmental groups for consideration on proposed agency policies and environmental impact statements. ERDA's consideration of this approach to public input grows out of a 32-page study submitted to the agency by the TRW Corporation in October 1975. The study, "An Exploratory Study of Public Interest Organizations' Participation in ERDA Planning," specifically recommend that:

> ERDA should draw on knowledgeable, well-trained professionals from public interest organizations for consultants who would approach energy issues from the perspective of environmental quality, benefit to the consumer, etc. We recommend that public interest consultants participate in the early stages in the planning process so as to challenge assumptions, test arguments, and offer alternatives.

Subject to the provisions that govern all government budgetary expenditures, citizen participants in agency technology assessments could be authorized by the given agency administrator to use a certain percentage of the study budget to pursue studies deemed of importance by the agency. As a preliminary step, the agency official responsible for a given assessment budget could seek public reaction to any proposed contract to be let out and could solicit recommendations for consulting work that needs to be done.

Example: ICC Outreach Attorneys

The Interstate Commerce Commission Public Counsel outreach attorneys alerted voluntary civic organizations to upcoming ICC hearings on rail reorganization plans and helped cities to understand the nature of the problems involved. This facilitated public testimony and comment.

Agencies could hire staff to act as outreach attorneys. These organizers would contact citizens, publicize public hearings, and in general, help citizens obtain technical assistance to provide input into technology assessments.